



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OPT, O

Introduction

This hearing dealt with an Application for Dispute Resolution seeking an interim order on the matter of jurisdiction.

The *ex parte* hearing was conducted in person at 3350 Douglas St, Victoria and was attended by the applicant.

Issue(s) to be Decided

The issue to be decided is whether the applicant and respondent are in a tenancy as defined under the *Residential Tenancy Act (Act)* or if the living accommodation is exempt from the *Act*, pursuant to Sections 4 and 59 of the *Act*.

Background and Evidence

The applicant submitted into evidence copies of Hotel Weekly/Monthly Stay Agreements for the months of May, July, and August 2012. These agreements include a monthly rent amount that for May 2012 was \$840.60 which includes taxes of 5% and for July and August 2012 rent was \$1,050.60 there is no indication this amount includes any taxes.

The agreements show that in May 2012 the tenant paid a security deposit of \$400.00 and then another security deposit of \$500.00 was paid for July 2012. The tenant testified that the \$500.00 paid in July 2012 was not returned nor was another deposit required for August 2012.

The agreement stipulates that the landlord reserves the right to “ask any guest” to leave the premises but does not stipulate any reasons for ending the agreement or evicting the tenant. There is nothing in the agreement that indicates the landlord will enter the rental unit without the tenant’s knowledge.

Analysis

Section 1 of the *Act* defines a tenancy agreement as an agreement between a landlord and tenant respecting possession of a rental unit, use of common areas and services and facilities and includes a licence to occupy.

A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month.

Based on the applicant's testimony, I find that the applicant has been paying monthly rent for May, July, and August 2012; that she has paid rent in advance; and that she has paid the rent on or about the same time each month. I find that these payments confer to the applicant exclusive possession of the unit for each month.

In addition, from the agreements submitted, I find, despite charging some form of tax in the amount of 5% for May 2012, the respondent has not been charging the applicant's a hotel room tax for any part of their occupancy of the rental unit for the months of July and August 2012 (i.e. the 2% municipal tax required under the *Hotel Keeper's Act*.)

From the agreements and testimony submitted I find the applicant paid a security deposit of \$400.00 for May 2012 and \$500.00 for July and August 2012; that she has not paid any municipal Hotel Room taxes for July and August 2012; that the respondent has not retained access to or control over portions of the unit; that the respondent has not retained the right to enter the unit without notice; that the parties have not agreed that the applicant may be evicted without reason.

Based on the above, I find that this rental unit is the applicants' only home and not vacation accommodation. I therefore find that the true nature of the occupancy is residential accommodation. For these reasons I find this is a tenancy and is not exempt from the *Act* pursuant to section 4(e).

Conclusion

Section 59(6) of the *Act* allows an individual occupying a room in a residential hotel to make an application for dispute resolution, without notice to any other party, requesting an interim order that this *Act* applies to that living accommodation.

For the reasons noted above, I grant the applicant an interim order that the *Residential Tenancy Act* applies to their living accommodation. I order that should the applicant proceed with an Application for Dispute Resolution for any matter they must provide a copy of this interim order with their Application and evidence for those matters and in accordance with the requirements of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 27, 2012.

Residential Tenancy Branch